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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1950

No. 575

NETHERLANDS MINISTRY OF TRAFFIC,
DIRECTORATE GENERAL OF SHIPPING,

Petitioner,

—VS.—

THOMAS STRIKA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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The NETHERLANDS MINISTRY OF TRAFFIC, DIRECTORATE GENERAL OF SHIPPING prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on November 29, 1950.

Opinions Below

The opinion of the District Court (R. 1117-1143),* is reported in 90 F. Supp. 534. The majority opinion of the Circuit Court of Appeals (R. pp. 393-399), and the dissenting opinion (R. pp. 399-400) are reported in 185 F. 2d 555.

* References are either to folios or to pages of the record unless otherwise indicated.

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on November 29, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

Questions Presented

1. Whether the Courts below erred in extending the doctrine of *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85, to a longshoreman injured on shore.

2. Whether the rights of a longshoreman injured on shore should not be determined under the State Compensation Law and the remedies afforded by it, rather than have the maritime doctrine of unseaworthiness of a vessel extended to him.

3. Whether in a suit in a common law court, a plaintiff may recover where he himself is found to be contributorily negligent.

Statement

This action was tried on the civil side of the District Court, Southern District of New York. Thomas Strika, a longshoreman employed by the Jarka Corporation was injured while working on Pier 5, Hoboken, New Jersey on March 15, 1947 (R. 58). At the time of his accident, Strika and fellow longshoremen were engaged in replacing a "pontoon hatch cover" from where it had been earlier placed on the pier to the deck of the SS "Zuiderkruis" owned by the petitioner (R. 324). The pontoon hatch cover was approximately twenty feet long, six feet wide and

about eighteen inches thick and weighed approximately one ton (R. 73, 916). To replace this cover, the longshoremen used two "bridles", each of which consisted of two legs of steel wire about sixteen feet long (R. 75-77, 600). These legs were joined to a steel ring at one end and were fitted with hooks at the others (R. 75-77). These hooks fitted into slots in the corners of the pontoon hatch cover (R. 665-666). Two sets of bridles were used (R. 75). The rings from each bridle were then placed in a hook attached to a fall and by means of winches, the hatch cover was started to be moved to the ship's deck (R. 85). The rings of the bridles were not fastened together by the longshoremen (R. 226-227). As the hatch cover was raised about four feet, one of the rings slipped off the hook, causing the cover to drop on Mr. Strika's leg, necessitating an amputation (R. 105). Strika applied for and was awarded compensation benefits under the State of New Jersey Workmen's Compensation Law (R. 860). No claim for benefits was made under the Longshoremen and Harbor Workers' Act (R. 861).

Seven separate questions were submitted by the trial court to the Jury which answered them (R. 1031-1033), in substance as follows:

1. The defendant furnished the bridles used to lift the pontoon hatch cover.

2. The bridles were unsuitable for lifting the hatch cover.

3. The unsuitability caused or contributed to the plaintiff's injury.

4. The shipowner did not know nor have reason to know that the bridles were unsuitable or that they might cause injury to someone such as the plaintiff.

5. The plaintiff's damages were $75,000.00.

6. The plaintiff's fault contributed to his injury.

7. The proportion of the plaintiff's fault was ten per cent.

Upon these special findings the District Court directed judgment for the plaintiff and denied the defendant's motion for judgment (R. 1143). By a two to one decision, the Court of Appeals affirmed this judgment. The basis for the District Court's decision was that while recognizing that this Court in *Seas Shipping Co. v. Sieracki,* 328 U. S. 85 (*supra*) especially at p. 99, footnote 17, left undecided the question of whether the doctrine of unseaworthiness "extends to injury incurred ashore by a stevedore", the District Court felt that the rationale of the *Sieracki* case "clearly embraces the longshoreman on the pier engaged in loading or unloading the ship" (R. 1137).

The majority of the Court of Appeals in affirming the District Court's judgment held (R. p. 398):

> "The breach of the 'obligation' to furnish a seaworthy ship is a tort; • • • From this the defendant argues that since an action upon such an implied warranty is only a tort, the maritime law can have no jurisdiction over a breach of it occurring upon land; that being, of course, an accepted constitutional limitation upon maritime law. We should have found this a serious obstacle were it not for *O'Donnell* v. *Great Lakes Dredge & Dock Co., supra,* and the *ratio decidendi* of *Swanson* v. *Marra Brothers, Inc., supra;* but those decisions appear to us to settle it that such a tort, arising as it does out of a maritime 'status' or 'relation', is cognizable by the maritime law whether it arises on sea or on land. For it seems to us to follow, if Congress has power to impose liabilities in favor of seamen for lapses of care on shore, that Congress at

least would have power to impose a similar liability when the lapse is in furnishing a seaworthy ship. It is true that Congress has not intervened as to seaworthiness; yet there is no more reason to circumscribe more narrowly the duty, which *The Osceola, supra,* established as part of the maritime law, than the Constitution circumscribes the power of Congress, for both in the end are based upon the same provision. Moreover, we find confirmation for this in the 'obligation' of 'maintenance and cure' of a seaman injured on shore, for that is concededly quite as entirely the creature of the maritime law as the 'obligation' to furnish a seaworthy ship. For these reasons, although we have been unable to find a decision holding that a seaman, injured ashore by unseaworthy ship's gear, can recover, we have no doubt that he could; and, if a seaman can, we see no reason to question the ability of a longshoreman also to recover.''

Specification of Errors to be Urged

The Circuit Court of Appeals erred:

1. In misconstruing and extending the doctrine of *Seas Shipping Co.* v. *Sieracki* (*supra*) to cover a longshoreman injured on shore.

2. In failing to reverse the judgment of the District Court and dismiss the complaint in view of the findings of the Jury that Strika was contributorily negligent.

3. In failing to apply the rules of the forum in which the case was tried. Thus, since this case was tried in a common law forum, the finding by the Jury of the plaintiff's contributory negligence was a complete defense to the action.

4. In failing to hold that the plaintiff's rights, if any, were covered by the New Jersey State Workmen's Compensation Law.

5. In affirming the judgment of the District Court.

Reasons for Granting the Writ

1. This is the first time that the point involved on this appeal has been raised either in this Court or any other federal court. The burden placed by this decision on the shipping industry is unnecessarily heavy; unnecessary because longshoremen injured on shore are already covered by liability without fault statutes namely, State Workmen's Compensation Acts. The specific question on this appeal was expressly left open by the majority opinion in *Seas Shipping Co.* v. *Sieracki* (*supra*) at p. 99, footnote 17. The decision of the Court of Appeals is contrary to the implications and the indicated holding of this Court.

In *O'Donnell* v. *Great Lakes Co.,* 318 U. S. 36, this Court held that a seaman injured on land by a shipowner's negligence had an actionable claim under the Jones Act on the ground that this was no more than a supplement to the remedy of cure and maintenance which was an incident of his employment by the ship. The question of whether a longshoreman had the same rights as a seaman to recover under the Jones Act for injuries on shore was specifically left open by this Court in the *O'Donnell* case.

In *Seas Shipping Co.* v. *Sieracki,* 328 U. S. 85, 99, at footnote 17, this Court said:

> "In this case we are not concerned with the question whether the same policy extends to injuries incurred ashore by a stevedore engaged in the same work, a

matter which is relevant however in *Swanson* v. *Marra Brothers, Inc.*, No. 405, decided this day, 1946 A. M. C. 715. Cf. *O'Donnell* v. *Great Lakes Co.*, 318 U. S. 36, 1943 A. M. C. 149."

In *Swanson* v. *Marra Brothers, Inc.*, 328 U. S. 1, the unanimous opinion was written by Ch. J. Stone, who had dissented in the *Sieracki* case. In the *Swanson* case, a longshoreman injured on a pier, sought to recover under the Jones Act. His contention was that since he was a "seaman" under the decision of this Court in *International Stevedoring Company* v. *Haverty*, 272 U. S. 50, and since this Court in the *O'Donnell* case (*supra*) held that a seaman injuried on a pier could sue to recover under the Jones Act, then the longshoreman was also entitled to sue. Obviously, if this Court intended for all purposes and in all places, to permit a longshoreman to have all of the attributes and protections of a seaman (in addition to those granted him by the Longshoremen and Harbor Workers' Act and State Compensation Acts), then the *Swanson* case would have come under the principle of the *O'Donnell* case. However, by a unanimous decision this Court held in the *Swanson* case that the longshoreman was not entitled to sue to recover under the Jones Act.

If the Court of Appeals holding in the instant case is correct, then a longshoreman should also be able to sue his employer under the Jones Act for injuries sustained on land such as was allowed to seamen under the *O'Donnell* case. The contrary to this, however, has been held by this Court in the *Swanson* case.

In the *Swanson* case (*supra*), this Court said (p. 6):

"The Act (Longshoremen's and Harbor Workers' Act) thus excludes from its benefits stevedores not

members of the crew who are injured on navigable waters from recovering under the Jones Act as interpreted by the Haverty case. Those provisions make it plain that Congress' own interpretation of the Jones Act is such as to preclude the extension of the doctrine of that case to the specified employees injured on land."

The Court then went on to quote from the Senate Judiciary Committee's Report made while considering the Longshoremen's and Harbor Workers' Act, which expressed doubt as to the constitutional power of Congress to allow recovery to such longshoremen injured on shore (p. 7):

"These men are mainly employed in loading, unloading refitting and repairing ships; but it should be remarked that injuries occurring in loading are not covered unless they occur on the ship or between the wharf and the ship so as to bring them within the maritime jurisdiction of the United States. Sen. Rep. No. 973 69th Cong., First Sess., p. 16."

The Court then concluded (p. 7):

"The Act leaves the injured employees in such cases to pursue the remedies afforded by the local law, which this Court has often held permits recovery against the employer for injuries inflicted by land torts on his employees who are not members of the crew of a vessel. *State Industrial Commission* v. *Nordenholdt Corp., supra; Smith & Son* v. *Taylor, supra; cf. Minnie* v. *Port Huron Co., supra.* And it leaves unaffected the rights of members of the crew of a vessel to recover under the Jones Act when injured while pursuing their maritime employment whether on board, *Warner* v. *Goltra,* 293 U. S. 155, 1934 A. M. C. 1436; *Norton* v.

Warner Co., 321 U. S. 565, 1944 A. M. C. 337; see *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 255-6, 1940 A. M. C. 327, or on shore, *O'Donnell* v. *Great Lakes Dredge & Dock Co., supra.*"

Chief Justice Stone in his dissenting opinion in the *Sieracki* case apparently gives this Court's interpretation of the *Swanson* case (328 U. S. 106):

> "Wherever the injury occurs on navigable waters, Congress has given to longshoremen and harbor workers substantial rights to compensation against their employer for injuries inflicted without his fault. *South Chicago Co.* v. *Bassett*, 309 U. S. 251, 1950 A. M. C. 327. It has left them free to pursue their remedy for injuries resulting from negligence of third parties, including in this case the vessel and the furnishers of the defective shackle. Where the injury occurs on land they are free to pursue the remedy afforded by local law. *State Industrial Commission* v. *Nordenhold Corp.*, 259 U. S. 263; *Smith & Son* v. *Taylor*, 276 U. S. 179, 1928 A. M. C. 447; *Swanson* v. *Marra Brothers, Inc.*, No. 405, 1946 A. M. C. 715, decided this day." (Italics ours.)

So by the Supreme Court's interpretation of the *Sieracki* and *Swanson* cases, decided on the same day, the cloak of a seaman granted a longshoreman under the *Haverty* case, does not follow the longshoreman ashore but only remains on his shoulders while he is aboard ship.

In *Resigno* v. *Jarka Co., Inc.*, 248 N. Y. 225 (1928), Ch. J. Cardozo writing for the Court said (p. 234):

> "True, indeed, it is that the remedies available to a stevedore may thus vary from day to day, and even from hour to hour, with the location of his labor. Dis-

tinctions of that order are not unknown to the law. They have been made familiar by rulings under the Workmen's Compensation Acts by which a longshoreman is given a remedy if working on a boat and denied the same remedy if working on a dock (*State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263). So under the Employers' Liability Act of Congress. The servant gains a remedy or loses one according to the particular service he is rendering at the very moment of the injury (*Chicago, B. & Q. R. R. Co.* v. *Harrington*, 241 U. S. 177)."

2. Mr. Strika accepted the benefits of the New Jersey State Workmen's Compensation Act (R. 860-861):

> The New Jersey Workmen's Compensation Law (N. J. R. S. 34:15-7, et seq.) provides:
>
> 34:15-40. LIABILITY OF THIRD PARTY: Where a third person or corporation is liable to the employee or his dependents for any injury or death, the existence of a right of compensation from the employer or insurance carrier under this statute shall not operate as a bar to the action of the employee or his dependents. * * *
>
> (f.) * * * The legal action contemplated herein shall be a civil action at law in the name of the injured employee. * * *

A situation similar to the case at bar on this point was thoroughly considered and decided by the Court of Appeals, Second Circuit in *Netherlands American Steam Nav. Co.* v. *Gallagher*, 282 F. 171 (C. C. A. 2) (*supra*). In that case the plaintiff, a longshoreman and a resident of New Jersey, was injured in Hoboken, New Jersey on the same pier on

which the accident in this suit occurred. He was engaged in unloading cargo from a vessel owned by his employer, the Netherlands American Steam Nav. Co., a foreign corporation. The Court said (p. 173):

> "This case presents an interesting and important question, involving the jurisdiction of the Courts of the United States and the applicability of the laws of a state to the cause of action which the plaintiff asserts. As the plaintiff at the time of his injury was performing service as a stevedore in unloading an ocean steamer at her pier in Hoboken and the injury happened to him on the pier, it is necessary, in determining the issues involved to consider the limits of the admiralty and maritime jurisdiction of the federal courts."

The question was answered (pp. 183-184):

> "That the plaintiff being injured on the land the wrong was nonmaritime, and as such was not within the admiralty jurisdiction, and was not brought within it by the fact that he happened to be working at the time under a maritime contract. And as the wrong done was not within the admiralty jurisdiction, and was within the jurisdiction of the courts of the state within which the injury was inflicted, the Workmen's Compensation Act of New Jersey (P. L. 1911, p. 136) applies * * *."

Thus, Strike was limited by the provisions of the New Jersey State Workmen's Compensation Act to a civil suit in law against any possibile negligent third parties. The Jury disposed of this suit by finding that the plaintiff was contributorily negligent and that the defendant had no knowledge of the unsuitability of the bridles.

3. This action was tried in a common law court. This Court has many times held that depending on the forum of trial, depends the procedural law which governs the trial. In a common law court, the defense of contributory negligence is a complete bar to a recovery, in an admiralty court the defense is only partial.

In *Belden* v. *Chase,* 150 U. S. 674, this Court squarely held that the rule of contributory negligence in common law courts is altogether different from its application in the admiralty court. The Court affirmed that at common law, contributory negligence is a complete bar, whereas, in admiralty, it merely causes a division of damages. At page 691, this Court said:

> "The doctrine in admiralty of an equal division of damages in the case of a collision between two vessel when both are in fault contributing to the collision, has long prevailed in England and this country. *The Max Morris,* 137 U. S. 1. But at common law the general rule is that if both vessels are culpable in respect of faults operating directly and immediately to produce the collision, neither can recover damages for injuries so caused. *Atlee* v. *Packet Co.,* 21 Wall. 389.
>
> "In order to maintain his action, the plaintiff was obliged to establish the negligence of the defendant, and that such negligence was the sole cause of the injury, or, in other words, he could not recover, though defendant were negligent, if it appeared that his own negligence directly contributed to the result complained of."

The rule has been consistently followed. It has not been confined to collision cases.

In *Guerrini* v. *U. S.*, 167 F. 2d, 352, an injury case, the Court of Appeals for the Second Circuit re-affirmed the doctrine of the *Belden* case. The Court said:

> "Moreover, whether the defense (of contributory negligence) is total or partial depends upon the forum."

See:

In re Pennsylvania R. Co., 48 F. 2d 559;
Johnson v. *United States Shipping Board Emergency Fleet Corp.*, 24 F. 2d 963.

Thus, the Court of Appeals in the instant case not only refused to follow this Court's holding in *Belden* v. *Chase* (*supra*) but disregarded its own decision.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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